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10 Attorneys for Plaintiff, OLGA ORTMANN, and the Proposed  
Class

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

OLGA ORTMANN, as an individual  
and on behalf of all others similarly  
situated.

**Plaintiff.**

18 VS.

19 NEW YORK LIFE INSURANCE  
COMPANY, a corporation; NEW  
20 YORK LIFE INSURANCE AND  
ANNUITY CORPORATION, a  
corporation; and DOES 1  
21 THROUGH 20, inclusive.

**Defendants.**

**Case No. CV-02506-WHA**

**CLASS ACTION**

Hon. William A. Alsup

Action Removed: May 10, 2007

**STIPULATION AND [PROPOSED]  
ORDER FOR DISMISSAL**

## **STIPULATION**

WHEREAS, on March 26, 2007 this action commenced when Plaintiff Olga Ortmann (“Plaintiff”) instituted a civil action in the Superior Court of the State of California for the County of Alameda against Defendants New York Life Insurance Company and New York Insurance and Annuity Corporation (collectively “Defendants”);

WHEREAS, on May 10, 2007, Defendants filed a Notice of Removal of Action to the United States District Court for the Northern District of California;

WHEREAS, on May 24, 2007, Defendants filed a Motion to Stay, Transfer or in the Alternative, Dismiss Pursuant to the First-To-File Rule. The Motion was brought on the grounds that a first-filed action was pending in the United States District Court for the Central District of California;

WHEREAS, that action, *Opyrchal v. New York Life Insurance Company, Inc., New York Life and Health Insurance Company, Inc., and New York Life Insurance and Annuity Corporation*, Case No. CV-07-518-VBF (VBKx) (the “Opyrchal Action”) includes claims identical to those asserted by Plaintiff in the present action;

WHEREAS, the Parties agree that the matter of *Ortmann v. New York Life Insurance Company, Inc., and New York Life Insurance and Annuity Corporation*, should be dismissed without prejudice and that Plaintiff will be added as a named plaintiff in the Opyrchal Action. The filing of the Amended Complaint, attached hereto, in the United States District Court for the Central District of California has been stipulated to by the parties so as to include the claims of Olga Ortmann in the Opyrchal Action.

NOW, THEREFORE, the Parties hereby stipulate and agree to the following and ask that the Court approve this stipulation as an Order of the Court:

1. That the Court order the matter of *Ortmann v. New York Life Insurance Company, Inc., and New York Life Insurance and Annuity Corporation*, Case No. CV-02506-WHA, dismissed without prejudice.

Dated: June 28, 2007

MARLIN & SALTZMAN  
SCHWARTZ, DANIELS & BRADLEY  
LAW OFFICES OF PETER M. HART

Bv

Marcus J. Bradley, Esq.  
Attorneys for Plaintiff

Dated: June 28, 2007

MORGAN, LEWIS & BOCKIUS, LLP

By

~~Hill Porcaro, Esq.~~  
Attorneys for Defendants

GOOD CAUSE APPEARING, IT IS SO ORDERED that the case *Ortmann v. New York Life Insurance Company, inc., and New York Life Insurance and Annuity Corporation*, Case No. CV-02406-WHA is dismissed without prejudice.

Dated: \_\_\_\_\_

United States District Judge

## **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
3 COUNTY OF LOS ANGELES ) SS.

I am employed in the aforesaid county; I am over the age of 18 and not a party to the  
within action; my business address is 29229 Canwood Street, Suite 208, Agoura Hills,  
California 91301.

On June 28, 2007, I served the foregoing document described as **STIPULATION AND PROPOSED ORDER FOR DISMISSAL** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

8 | SEE ATTACHED SERVICE LIST

- 9 [x] BY MAIL -- I deposited such envelope(s) in the U.S. Mail at Agoura Hills, California.  
The envelope was mailed with postage thereon fully prepaid.

10 [ ] BY PERSONAL SERVICE -- I caused such envelope(s) to be delivered by hand to the  
11 offices of the addressee.

12 [ ] BY FACSIMILE -From FAX No. (310) 478-1232 to the person(s) and facsimile  
13 number(s) indicated on the attached mailing list. The facsimile machine I used  
complied with Rule 2003(3), and no error was reported by the machine. Pursuant to  
Rule 2005(i), I caused the machine to print a record of the transmission.

14 [ ] BY EXPRESS DELIVERY By deposit in a box regularly maintained by an express  
15 service carrier that promises overnight delivery, in an envelope designated by the  
express service carrier with delivery fees paid or provided for, addressed to the person  
16 on whom it to be served.

Executed on June 28, 2007, at Agoura Hills, California.

I declare that I am employed in the office of a member of the bar of this Court at whose direction service was made.

20 I declare under penalty of perjury under the laws of the United States and the State of California that the above is true and correct.



Donna Pitek

## **SERVICE LIST**

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